



(4910-62-P)

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[Docket No. OST-2011-0202]

Privacy Act of 1974; System of Records Notice

AGENCY: Department of Transportation (DOT), Office of the Secretary

ACTION: Notice to establish a new System of Records.

SUMMARY: The Department of Transportation's Office of the Secretary of Transportation (DOT/OST) intends to establish a DOT-wide System of Records under the Privacy Act of 1974 (5 U.S.C. § 552a) to create and maintain civil rights program records which are not covered by the Government-wide System of Records Notices (SORNs) of the Office of Personnel Management [OPM/GOVT-1] and the Equal Employment Opportunity Commission [EEOC/GOV-1]. OPM/GOVT-1 covers general personnel records pertaining to Federal employees and EEOC/GOV-1 covers equal employment opportunity records pertaining to claims by Federal employees and applicants for Federal employment who allege they have been discriminated against by a Federal agency under Title VII of the Civil Rights Act of 1964, as amended; Section 15 of the Age Discrimination in Employment Act, Section 501 of the Rehabilitation Act of 1973, as amended; and the Equal Pay Act.

The DOT system, known as the Departmental Office of Civil Rights System (DOCRS), is used to track correspondence, inquiries, complaints, and appeals filed by individuals,

small business, or representatives of individuals or small business who believe they have been subjected to prohibited discrimination or retaliation by a DOT Federally-assisted or Federally-conducted program or activity. DOCR is more thoroughly detailed below and in the Privacy Impact Assessment (PIA) prepared for the information technology (IT) system that DOT uses for its internal and external civil rights programs. The PIA can be found on the DOT Privacy Web site at <http://www.dot.gov/privacy>.

DATES: Effective [insert date thirty days after publication]. Written comments should be submitted on or before the effective date. DOT/OST may publish an amended SORN in light of any comments received.

ADDRESSES: You may file comments identified by the docket number DOT-OST-2011-0202 by any of the following methods:

- Federal Rulemaking Portal: go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE, between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal Holidays.
- Fax: (202) 493-2251.

Instructions: You must include the agency name and docket number DOT-OST-2011-0202 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You may review DOT's complete Privacy Act statement in the *Federal Register* published on April 11, 2000 (65 FR 19477-78), or you may visit <http://DocketsInfo.dot.gov>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Joseph E. Austin, Associate Director, External Civil Rights Programs Division, Departmental Office of Civil Rights, Office of the Secretary of Transportation, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590, or 202-366-5992. For privacy issues, please contact: Claire Barrett, Departmental Chief Privacy Officer, Office of the Chief Information Officer, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590; claire.barrett@dot.gov; or (202) 366-8135.

SUPPLEMENTARY INFORMATION:

I. DOT's Civil Rights Program

DOT, through assigned civil rights personnel in each DOT component (chiefly, the Departmental Office of Civil Rights (DOCR) within OST), is responsible for ensuring that DOT does not discriminate against its employees or applicants for employment ("internal"); enforcing civil rights laws prohibiting discrimination and retaliation by DOT Federally-assisted and Federally-conducted programs and activities against members of the public; and investigating and responding to complaints filed by DOT employees pursuant to sections 504 and 508 of the Rehabilitation Act of 1973, as amended (together, these three activities comprise DOT's "external" civil rights programmatic responsibilities). DOT's enforcement activities with respect to this program include:

- Documenting, investigating, and responding to "internal" and "external" civil rights complaints and inquiries;
- Conducting reviews of DOT Federally-funded recipients to assess their compliance with civil rights laws; and
- Adjudicating and issuing written decisions in administrative appeals filed with DOT/DOCR by small businesses (including sole proprietorships) that have been denied certification as a "disadvantaged business enterprise" (DBE) or airport concessions DBE (ACDBE) by a DOT Federally-assisted recipient pursuant to 49 CFR Parts 23 and 26.

II. The Privacy Act

The Privacy Act (5 U.S.C. § 552a) governs the means by which the Federal Government collects, maintains, and uses personally identifiable information (PII) in a System of Records. A "System of Records" is a group of any records under the control

of a Federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the Federal Register a System of Records notice (SORN) identifying and describing each System of Records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals to whom a Privacy Act record pertains can exercise their rights under the Privacy Act (e.g., to determine if the system contains information about them and to contest inaccurate information).

Under the Privacy Act, an agency is permitted to exempt certain types of systems from certain requirements of the Privacy Act, after completing a formal rulemaking process to revise the agency's Privacy Act regulations to add the system to the agency's list of exempt systems. The XCRS system is eligible for exemption because it will contain law enforcement investigatory material. On [date], DOT published a Notice of Proposed Rulemaking (NPRM) in the Federal Register, proposing exemptions for this system.

The NPRM can be accessed through <http://www.regulations.gov>, Docket Number DOT-OST-2011-0202. Comments on the proposed exemptions must be submitted to the docket for that rulemaking, by any of the methods outlined in the NPRM. Comments on other parts of the SORN must be submitted in writing, by any of the methods outlined in this Notice.

In accordance with 5 U.S.C. § 552a(r), a report on the establishment of this System of Records has been sent to Congress and to the Office of Management and Budget.

System Number: DOT/ALL-24

System name: Departmental Office of Civil Rights System

Security classification: Unclassified, sensitive.

System location: Records are maintained by the DOT Departmental Office of Civil Rights, and DOT component civil rights offices. The electronic records systems are maintained on a server that is physically located at a contractor facility in Sterling, Virginia. The server is hosted and maintained by Micropact Engineering, Inc., headquartered in Herndon, Virginia. The system owner is the Departmental Office of Civil Rights (DOCR), S-30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE, Room W78-320, Washington, D.C. 20590.

Categories of individuals covered by the System of Records: Members of the public (including DOT employees filing complaints pursuant to sections 504 and 508 of the Rehabilitation Act of 1973, as amended) who have submitted inquiries, complaints, or appeals to DOT, alleging discrimination by DOT or by third parties pertaining to DOT Federally-assisted or DOT Federally-conducted programs or activities; individuals who are the subjects of external civil rights inquiries, complaints and appeals; and witnesses who are interviewed concerning same.

Categories of records in the system: Records of civil rights discrimination inquiries, complaints, and appeals received by DOT from members of the public, DOT employees, small businesses or representatives of these groups; records compiled during the investigation of the complaints and appeals; and records of responsive

actions taken by DOT, including complaint information, statements, exhibits, reports and correspondence; records concerning applications for certification as a disadvantaged business enterprise, including business name, contact information, and name of business owners. The records may contain the following personally identifiable information (PII):

- personal contact information for individual complainants, complaint subjects, DBE appellants, and/or witnesses who are involved in particular discrimination claims, such as name, home address, email address, and home telephone number;
- identification information and descriptive details about individual complainants, such as the last four digits of the complainant's Social Security Number, date of birth, race, color, national origin, sex, religion, age (40 or over), disability, sexual orientation, parental status, and/or genetic information; and
- financial information pertaining to individual owners of small businesses that have been denied "disadvantaged business enterprise" (DBE) certification.

Authority for maintenance of the system: 42 U.S.C. § 2000d et seq., § 12101 et seq., 42 U.S.C. § 6101 et seq.; 29 U.S.C. §§ 794, 749d; 49 U.S.C. § 47113; and Executive Order 13160.

Purpose(s): DOT Civil Rights personnel use the contact information, identification information and descriptive details to document, investigate, and respond to civil rights

complaints, inquiries, and DBE appeals, and to conduct reviews of Federally-funded recipients to assess their compliance with civil rights laws. In DBE appeal cases, DOT/DOCR staff use financial information when necessary to make personal net worth determinations about sole proprietors claiming DBE status. DOT may utilize contractors to assist with certain tasks; for example, contractors may help DOCR analyze financial information for personal net worth determinations in DBE appeal cases.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: In addition to those disclosures generally permitted under 5 U.S.C. § 552a(b) of the Privacy Act, all or a portion of the records of information contained in this system may be disclosed outside of DOT as a routine use pursuant to 5 U.S.C. § 552a(b)(3), as follows:

A. To the United States Department of Justice (DOJ), including United States Attorneys Offices, or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DOT or any component thereof;
2. Any employee of DOT in his/her official capacity;
3. Any employee of DOT in his/her individual capacity where the DOJ or DOT has agreed to represent the employee; or
4. The United States, or any agency thereof, is a party to the litigation or has an interest in such litigation and DOT determines that the records are both

necessary and relevant to the litigation and the use of such records is compatible with the purpose for which DOT collected the records.

- B. To recipients of Federal financial assistance, witnesses, or consultants if necessary to assist DOCR in resolving civil rights complaint or in obtaining additional information or expert advice relevant to the investigation of a civil rights complaint.
- C. To an adjudicative body before which DOT or one of its components is authorized to appear or to an individual or entity designated by the DOT or otherwise empowered to resolve or mediate disputes to the extent that the disclosure is necessary and relevant to the litigation or alternative dispute resolution (ADR).
- D. To a party, counsel, representative or witness in a litigation or ADR if relevant and necessary to the litigation or ADR.
- E. To a congressional office in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.
- F. To the National Archives and Records Administration (NARA) or other Federal government agencies pursuant to records management inspections being conducted under the authority of Title 44 of the United States Code.
- G. To an agency, organization, or individual for the purpose of performing audit or oversight operations authorized by law, but only to the extent that such information is necessary and relevant to the audit of oversight function.
- H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement or

other assignment for DOT, when necessary to accomplish and agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DOT officers and employees.

- I. To another Federal agency with responsibility for labor or employment relations or other issues, including Equal Employment Opportunity issues, when that agency has jurisdiction over issues reported to the DOT Departmental Office of Civil Rights, or component civil rights and civil liberties staff, and staff of components who do not have a designated civil rights and civil liberties office, but who perform related functions.
- J. To States, DOT Federal-funding recipients, and members of the public, the following information regarding entities determined ineligible for DBE certification: business name, the business owner(s), type and date of the denial, and name of the entity that made the decision.
- K. See "Prefatory Statement of General Routine Uses" (available at <http://www.dot.gov/privacy/privacyactnotices>).

Other possible routine uses of the information, applicable to all DOT Privacy Act systems of records, are published in the Federal Register at 75 FR 82132, December 29, 2010, under "Prefatory Statement of General Routine Uses" (available at <http://www.dot.gov/privacy/privacyactnotices>).

Disclosure to consumer reporting agencies: None.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system—

Storage: Records are maintained in an electronic database and in paper files. Certain records are maintained only in paper files (for example, financial documents, photographs, and audio recordings).

Retrievability: Records are retrieved by the complainant's, inquirer's, or DBE appellant's name or case number, address, telephone number, or email address.

Safeguards: Electronic files are stored in secure, password-protected databases. Users must sign a Rules of Behavior document prior to being granted access to the electronic systems. Any paper files and system-generated reports containing PII are labeled as containing PII and are stored in locked file cabinets and/or in a locked file room. Only the System Administrator and authorized Civil Rights personnel in DOCR and in each DOT component are allowed access to the files, and on a "need-to-know" basis.

Retention and disposal: DOT is preparing a new records disposition schedule (Standard Form 115) for submission to the National Archives and Records Administration (NARA), which will include the following proposed retention periods:

- General Information: Destroy/delete 3 years after inquiry date, unless needed longer for legal or audit purposes.
- Complaints and DBE Appeals: Destroy/delete 5 years after final decision, unless needed longer for legal or audit purposes. A redacted copy of the

final decision (with PII removed) may be retained longer for reference purposes.

- De-certifications and Denials: Delete immediately if decision to de-certify or deny certification is reversed or rescinded.

System Manager and address: Director, Departmental Office of Civil Rights (DOCR), S-30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE, Room W78-320, Washington, D.C. 20590.

Notification procedure: At any time, an individual inquirer, complainant, or DBE appellant may contact the System Manager to request access to review his or her personal information in the system and request changes, as appropriate. During the pendency of the investigation, DOT may deny the individual access to the investigation files if necessary to avoid compromising the investigation. The investigator may require that the request be submitted in writing and include the requester's name, mailing address, telephone number, and/or email address, a description of the records requested, and a sworn statement (either a notarized statement or a statement signed under penalty of perjury) that the requester is the individual who he or she claims to be.

Record access procedure: Same as indicated under "Notification procedure."

Contesting record procedure: Same as indicated under "Notification procedure."

Record source categories: Information is obtained from individuals making inquiries; correspondents; complainants; complaint subjects; DBE appellants; interviewees; investigation reports; and review of records.

Exemptions claimed for the system: Pursuant to subsection (k)(2) of the Privacy Act (5 U.S.C. § 552a), because this system will contain investigatory material compiled for law enforcement purposes, a Notice of Proposed Rulemaking (NPRM) is pending to revise DOT's Privacy Act regulations (49 C.F.R. Part 10, Appendix, Part II.) to exempt this system from the requirements of the following Privacy Act subsections, for the reasons stated in the proposed revision: (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) to the extent that DO CRS contains investigatory material compiled for law enforcement purposes

Issued in Washington, DC, on November 9, 2011

Claire Barrett

Departmental Chief Privacy Officer

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